



May 4, 2001

Ms. Pamela Harrell-Liston  
Cowles & Thompson  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3793

OR2001-1829

Dear Ms. Harrell-Liston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146809.

The City of Rowlett (the “city”), which you represent, received a request for information relating to a named individual, to include a copy of the court file, the name of the individual’s public defender during her trial, her criminal record, and copies of pictures, if available, of an incident on June 6, 1996. You inform us that the first part of the request, which generally seeks information on the named person, is too vague and broad for a response from the city. You further assert that the city does not have in its possession the copy of the court file and the name of the individual’s public defender, if any. You state that the city does have the named individual’s criminal records and the photographs of the crime scene. You argue that this information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8-9 (1990), 87 (1975).

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<sup>1</sup>We assume that the “representative samples” of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.222(b) of the Government Code, however, provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. This office has previously held that a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request." Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982) (governmental body sought clarification as to particular documents sought when requestor asked for all documents relating to particular issue).

Similarly, section 552.222(b) also provides that "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed . . . ." However, section 552.222(b) does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. The purpose of this section is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.<sup>2</sup> ORD 663. When a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow or clarify the request. *See id.* at 5. On the other hand, if the requestor chooses not to narrow a broad request, the governmental body must release all responsive information if no exception to disclosure applies. You state that you have asked the requestor for clarification as to the first part of the request.

With regard to the responsive information you have submitted to this office, we note that, because the Act prohibits the release of confidential information and because its improper release constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body, although the attorney general ordinarily will not raise other exceptions that a governmental body has failed to claim. *See* Open Records Decision Nos. 455 at 3 (1987), 325 at 1 (1982). Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

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<sup>2</sup>Section 552.222(b) also limits the nature of the inquiries by the governmental body to those regarding the requested documents themselves. This section prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990)*. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information submitted for our review as Exhibit A is CHRI generated by TCIC and NCIC. Accordingly, this information is excepted from required public disclosure by section 552.101 of the Government Code and must be withheld.

We next address your arguments under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

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Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See Gov't Code* §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the criminal prosecution of the named individual is not complete, and further, that the requested information relates to a pending homicide investigation. On this basis, we find that release of the requested photographs would interfere with the detection, investigation, or prosecution of crime and thus, it is excepted from disclosure under section 552.108(a)(1) at this time. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

To summarize, the city must withhold the CHRI submitted as Exhibit A under section 552.101, and may withhold the photographs, a representative sample of which you have submitted as Exhibit B, under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 146809

Encl. Submitted documents

cc: Ms. Ivis Rodriguez  
Fax: (305) 443-2552  
(w/o enclosures)